

BEFORE THE  
**Federal Communications Commission** **RECEIVED**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Reallocation of Television Channels  
60-69, the 746-806 MHz Band

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)  
) ET Docket No. 97-157  
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To: The Commission

**REPLY COMMENTS  
OF THE  
INTERNATIONAL MUNICIPAL SIGNAL ASSOCIATION  
AND THE  
INTERNATIONAL ASSOCIATION OF FIRE CHIEFS, INC.**

The International Municipal Signal Association ("IMSA") and the International Association of Fire Chiefs, Inc. ("IAFC"), by their attorneys, respectfully submit these Reply Comments regarding Comments filed by other participants in response to the Notice of Proposed Rule Making ("Notice") released by the Federal Communications Commission ("Commission") in the above-captioned matter on July 10, 1997.

**I. REPLY COMMENTS**

In their Comments, IMSA and IAFC strongly supported the Commission's proposal to allocate 24 megahertz of spectrum at 764-776 MHz and 794-806 MHz to public safety use and urged the Commission to move forward with the licensing of this spectrum as soon as possible, in accordance with the Balanced Budget Act of 1997

("Budget Act"). Numerous other commenting parties also expressed support for the proposed public safety allocation.<sup>1/</sup> Noting their concern, however, that this reallocation will provide little, if any, relief in the near term to public safety entities located in areas where channels 60-69 are heavily used by analog broadcasters and/or have been reserved for digital television ("DTV") allotments, many such parties requested the Commission to implement affirmative measures to encourage a swift and timely transition to DTV.<sup>2/</sup>

In contrast, the Comments of parties representing broadcast interests -- including Low Power Television ("LPTV"), TV translator and full power TV operations -- generally seek to protect and preserve, to the greatest extent possible, existing and contemplated broadcast uses of channels 60-69.<sup>3/</sup> As further discussed below, however,

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<sup>1/</sup> See, e.g., Comments of: the Association of Public-Safety Communications Officials-International, Inc. ("APCO"); the Affiliated American Railroads; the California Public-Safety Radio Association; the Cellular Telecommunications Industry Association; the Cities of Dallas, Austin, Denton and Plano; the City of Long Beach, California; the County of Los Angeles; Ericsson, Inc.; the Land Mobile Communications Council ("LMCC"); Motorola; the National League of Cities, National Criminal Justice Association, National Coordinating Council of Emergency Services, the California League of Cities and the City of New York; the National Public Safety Telecommunications Council ("NPSTC"); the Personal Communications Industry Association; the Rural Telecommunications Group; the South Carolina Budget and Control Board, Office of Information Resources and the National Public Safety Regional Review Committee; the State of California; the State of Florida; and UTC, The Telecommunications Association.

<sup>2/</sup> See, e.g., Comments of: APCO; the California Public-Safety Radio Association; the City of Long Beach; the County of Los Angeles; NPSTC; the State of California; and the State of Florida.

<sup>3/</sup> See, e.g., Comments of: the Association for Maximum Service Television, Inc. and the  
(continued...)

incumbent LPTV and translator licensees on channels 60-69 must be accommodated *below*, rather than above, channel 60 and cannot be permitted to impede public safety entities from using the reallocated channels on or after September 30, 1998. IMSA and IAFC also believe that, to further the goals and policies underlying the Budget Act, the Commission should do whatever is necessary to expedite the DTV transition, including the adoption of incentives for early relocation. Further, the Commission should not allow any new or expanded full power analog broadcast operations on channels 60-69, nor should it grant any additional DTV allotments in this band.

**A. Incumbent LPTV and Translator Operations Must Not be Permitted to Delay or Impede Public Safety Use of the Reallocated Spectrum**

In its Notice, the Commission concluded that LPTV and TV translator licensees will retain their secondary status and will not be permitted to cause harmful interference to or claim protection from harmful interference caused by stations of primary services on channels 60-69, including public safety licensees. (Notice at ¶ 19). To accommodate these displaced LPTV and TV translator licensees, the Commission determined that they should be permitted to apply for suitable replacement channels on a first-come, first-

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<sup>3/</sup>(...continued)

National Association of Broadcasters; the Association of Local Television Stations, Inc.; CBS Inc.; the Community Broadcasters Association; Cordillera Communications, Inc.; Givens & Bell, Inc.; Jovon Broadcasting Corporation; KM Communications, Inc.; KSL Television; KSLS, Inc.; KUED Television; the National Translator Association; National Minority T.V., Inc.; Paging Systems, Inc.; Paxson Communications Corporation; San Juan County; Stead Communications; the Trinity Broadcasting Network; United Television, Inc. and John C. Siegel; Weigel Broadcasting Co.; West Central Illinois Educational Telecommunications Corporation; WinStar Broadcasting, Inc.; and WWAC, Inc.

served basis, without being subject to competing applications; that industry negotiation and coordination efforts must be open to all parties, including LPTV licensees; and that LPTV and TV translator operations may continue until they cause actual interference to new DTV channels or any primary services operating in the 746-806 MHz band. (Notice at ¶ 18). Although the Commission solicited comment as to whether any additional measures should be adopted to mitigate the impact on LPTV and translator licensees during the transition period, it emphasized that "any accommodation of low power operations should not impede public safety use of the spectrum." (Notice at ¶ 19).

Despite this clear warning, a number of LPTV and translator interests proposed measures in their Comments which would delay, interfere with, or in some instances even derail, the contemplated reallocation to public safety use of a portion of the channel 60-69 spectrum.<sup>4/</sup> For instance, several commenting parties recommended that the Commission allow public safety and other new services to operate on channels 60-69 *only if* the applicant can demonstrate that: (1) it has a clear need for the spectrum; (2) it has adequate financial backing; and (3) no other frequencies are available.<sup>5/</sup> Additionally, some parties have asked the Commission to allow LPTV and translator operations to continue on

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<sup>4/</sup> See, e.g., Comments of: the Community Broadcasters Association; Cordillera Communications, Inc.; KSL Television; KUED-TV; the National Translator Association; National Minority T.V., Inc.; Paging Systems, Inc.; Paxson Communications Corporation; San Juan County; the Trinity Broadcasting Network; Weigel Broadcasting Co.; and West Central Illinois Educational Telecommunications Corporation.

<sup>5/</sup> See Comments of San Juan County at 3-4; Comments of KSL Television at 3-4; Comments of KUED-TV at 3-4.

channels 60-69 throughout the transition period with protection against interference from new users, to delay the licensing of new users (including public safety entities) on some or all of the reallocated spectrum until after the transition period and/or to require that displaced LPTV and translator licensees be compensated for their relocation costs.<sup>6/</sup> Others even argue that the proposed reallocation of channels 60-69 should be abandoned altogether.<sup>7/</sup>

IMSA and IAFC strongly oppose these proposals. Congress has made a clear determination that the prompt reallocation of channels 60-69 would serve the public interest; and Congress therefore directed the Commission (in the Budget Act) to allocate 24 megahertz of this spectrum for public safety services, to begin assigning new licenses for this spectrum by September 30, 1998 and to "establish rules insuring that public safety services licensees using spectrum reallocated pursuant to [the Budget Act] shall not be subject to harmful interference from television broadcast licensees." 47 U.S.C. § 337(a) and (d)(4). While the Budget Act also requires the Commission to "establish any additional technical restrictions necessary to protect full-service analog television service and digital television service during a transition to digital television service," 47 U.S.C. § 337(d)(2), Congress did not enact a like provision with respect to LPTV and translator

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<sup>6/</sup> See, e.g., Comments of: Cordillera Communications, Inc.; National Minority T.V., Inc.; the National Translator Association; and Paxson Communications Corporation.

<sup>7/</sup> See Comments of: Paging Systems, Inc.; and the Trinity Broadcasting Network.

services. Rather, and as recognized by other commenting parties,<sup>8/</sup> Congress only has instructed the Commission to assure "that each qualifying low-power television station is assigned a frequency below 746 megahertz to permit the continued operation of such station." 47 U.S.C. § 337(e)(2) (emphasis added). Given that Congress has made no specific provision for the accommodation of translator operations on channels 60-69, they, too, may not be permitted to impede the implementation of new public safety services and should be accommodated below channel 60.

Any accommodation to incumbent LPTV or translator licensees which interferes with the ability of public safety entities to have access to the full 24 megahertz of reallocated spectrum beginning on September 30, 1998, unencumbered by interference from LPTV or translator operations, would be flatly inconsistent with the aforementioned provisions of the Budget Act. Accordingly, the Commission may not require public safety applicants to justify their need for the reallocated spectrum, to compensate broadcasters for their relocation costs, to wait until after the transition to initiate operations or to suffer interference from LPTV or TV translator operations during the transition period. As noted above, the accommodation of incumbent LPTV and translator operations is to occur below channel 60. In the event that appropriate replacement channels are not available, the Commission could accommodate some of these licensees on the *non*-public safety portions of the 746-806 MHz band until this spectrum is

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<sup>8/</sup> See Comments of KM Communications, Inc. at 5; Comments of LMCC at 11.

required for new services after 2001, provided that no interference is caused to adjacent-channel public safety operations.

IMSA and IAFC also note that *if* -- as certain LPTV and translator interests claim -- there are areas in which public safety entities do not need additional spectrum or do not have the funding necessary to employ new systems, incumbent LPTV and translator operations will be able to continue indefinitely on this spectrum under the Commission's proposed new rules and would not need any of the additional protections for which they are asking. A requirement that public safety entities justify their need for the new channels over and over again on a case-by-case basis would serve only to prolong the licensing process, thereby delaying the emergence of important new public safety services while improperly extending the time period during which LPTV and translator licensees may remain in the band. Such a result would contravene the plain language and intent of the Budget Act, to the detriment of the health and safety of the American public.

**B. The Commission Should Adopt Measures to Expedite and Facilitate the DTV Transition and Minimize Existing Broadcast Use of the New Public Safety Channels**

The *Final Report* of the Public Safety Wireless Advisory Committee ("PSWAC") identified a need *in the short term* (*i.e.*, within five years) for approximately 25 megahertz of new public safety spectrum.<sup>2/</sup> As many commenting parties have pointed out, the new public safety allocation from television channels 60-69 will not satisfy this short term

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<sup>2/</sup> See Comments of NPSTC at 3.

need in many areas, due to the existence of full power broadcast operations and a number of DTV allotments in this band.<sup>10/</sup> IMSA and IAFC join these commentators in urging the Commission to take aggressive measures to encourage a prompt DTV transition and expedite the relocation of broadcasters from channels 60-69.

The State of California, for example, has recommended that the Commission, among other things: (1) immediately cancel all television allocations for analog stations on channels 60-69 for which a construction permit has not been issued; (2) immediately cancel all existing television construction permits for channels 60-69 unless the permittee can show a purchase order for the transmitter which cannot be canceled or modified; (3) require that all analog station licensees operating on channels 60-69 submit annual reports on their progress toward implementing digital technology; (4) provide incentives for analog broadcasters to relocate from channels 60-69 as quickly as possible; and (5) relocate DTV allocations on channels 60-69 to alternative spectrum as soon as it is cleared by other broadcast licensees.<sup>11/</sup> IMSA and IAFC fully support these proposals and further request that the Commission deny all requests for the expansion of existing analog broadcast operations on channels 60-69 (including requests to increase power) and

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<sup>10/</sup> See citations at n.2, *supra*.

<sup>11/</sup> Comments of the State of California at 5-6. Similar recommendations are presented by NPSTC in its Comments. IMSA and IAFC agree with NPSTC that permittees and pending applicants for broadcast licenses on channels 60-69 should be provided an appropriate extension of time during which to modify their applications to request use of channels below 746 MHz. See Comments of NPSTC at 12-13.



for additional DTV allotments in this band. The grant of such requests would unnecessarily delay or impede the ultimate clearing of this spectrum by broadcasters and the initiation of new public safety services.

## **II. CONCLUSION**

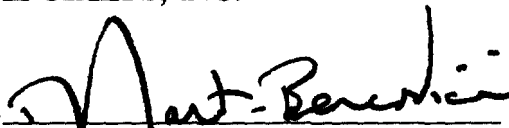
IMSA and IAFC are pleased that the Commission has taken this important step toward addressing the critical spectrum requirements of public safety licensees. To comply with the requirements of the Budget Act and maximize the utility of the new public safety allocation in the near term, however, the Commission also must: (1) prohibit LPTV and translator operations from impeding the deployment of public safety services; (2) actively encourage a prompt transition to digital technology; and (3) decline to authorize any additional or expanded broadcast operations on channels 60-69.

**WHEREFORE, THE PREMISES CONSIDERED,** the International Municipal Signal Association and the International Association of Fire Chiefs, Inc. respectfully urge the Federal Communications Commission to act in a manner fully consistent with the views expressed herein.

Respectfully submitted,

**INTERNATIONAL MUNICIPAL SIGNAL  
ASSOCIATION**

**INTERNATIONAL ASSOCIATION OF  
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